

The attached Appendix includes marked-up copies of each rewritten claim (37 C.F.R. §1.121(c)(1)(ii)).

As agreed in the June 27, 2003 telephone conference between Examiner Coe and Applicant's undersigned representative, Examiner Coe will contact us to discuss the Amendment once she receives it.

Claims 18-20 are withdrawn from consideration, but should be rejoined when a corresponding product claim is found to be allowable.

Claims 1-16, 21 and 22 are rejected under the judicially created doctrine of obviousness-type double patenting over claim 1 of U.S. Patent No. 6,342,236. Applicant respectfully submits that a Terminal Disclaimer will be filed, if necessary, when the claims are otherwise allowed.

Claims 4, 5, 14, 15 and 16 are rejected under 35 U.S.C. §112, second paragraph. Applicant respectfully traverses the rejection.

Claim 4 has been canceled rendering the rejection of this claim moot.

Claim 5 has been amended to recite that a major portion of the composition consist of one or more constitutive components of skin. The term "major" would be understood by one of ordinary skill in the art. In particular, in the present context, the term "major" is defined as of greater quantity. Thus, claim 5 is clearly directed to a composition where more than 50% by weight of the composition consists of constitutive components of the skin. In contrast, the other portion of the composition is the "minor portion." This phrase has been deleted from claim 5 and moved to new dependent claim 29. However, the "minor portion" is clearly less than 50% by weight of the composition.

Claim 14 clearly recites the invention. In particular, claim 14 recites that the composition "is not a complex of natural products, without any excipient or vehicle." Thus, to be encompassed by claim 14, a composition that is a complex of natural products must

comprise an excipient or vehicle. As a result, a composition consisting of a complex of natural products is not encompassed by claim 14.

Claim 15 has been amended to delete "including water." Water is clearly an excipient or vehicle. Thus, although the phrase "including water" has been deleted from claim 15, claim 15 still clearly excludes water from the composition being claimed therein.

Claim 16 has been amended to delete the objected to subject matter.

Claim 4 has been cancelled and claims 5, 14, 15 and 16 clearly define the invention. Therefore, the rejection under 35 U.S.C. §112, second paragraph, should be reconsidered and withdrawn.

Claims 1-8, 12, 14-16 and 21 are rejected under 35 U.S.C. §102 over WO 89/05628 to Lask (hereinafter "Lask"). Applicant respectfully traverses the rejection.

Lask is directed to a cosmetic preparation comprising amino acid and/or a term that is translated in the Abstract as "albumin," this word including albumin and collagen. Page 2, lines 8-11. As indicated in the Abstract, the cosmetic comprises at least 60 to 100 parts by weight of amino acid and/or "albumin." The cosmetic also contains 10 to 20 parts by weight vitamin E, 0.5 to 2 parts by weight unsaturated fatty acids, at least 3 to 5 parts by weight plant extract, 0.5 to 2 parts by weight polyol, and at least 1 to 3 parts by weight animal hormone or ferment.

Lask does not teach a cosmetic composition comprising the claimed amount of biodermal constituents. In particular, even assuming that the composition described in Lask contains the maximum amount of biodermal constituents, i.e., 100 parts by weight amino acid and/or a biodermal "albumin," such as collagen, 20 parts by weight vitamin E, and 2 parts by weight biodermal unsaturated fatty acid, such as vitamin F, and the minimum amount of non-biodermal constituents, i.e., 3 parts by weight plant extract, 0.5 parts by weight polyol, and 1 part by weight animal hormone or ferment, the composition would only comprise 96.4% by weight biodermal constituents and it would contain 3.6% by weight non-biodermal

constituents. In the specific example described at the bottom of page 2, Lask teaches a composition comprising biodermal constituents (collagen, vitamin E and vitamin F) in an amount of only 92.9% by weight, 7.1% by weight of the composition comprising non-biodermal constituents (plant extract, glycerin and thymus extract). Thus, Lask clearly does not anticipate the present claims.

Lask does not teach each and every feature of the present claims. Therefore, the rejection under 35 U.S.C. §102 in view of this reference should be reconsidered and withdrawn.

Claims 1, 9-13 and 22 are rejected under 35 U.S.C. §103 over Lask in view of U.S. Patent No. 4,863,897 to Dede et al. Applicant respectfully traverses the rejection.

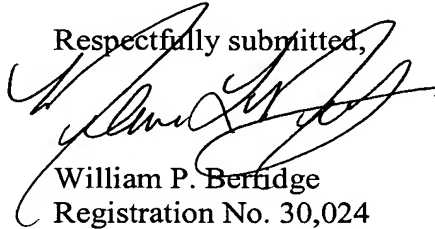
As discussed above, Lask does not teach or suggest a composition according to claim 1. In addition, neither Lask nor Dede provide any motivation to increase the amount of biodermal constituents in the composition described in Lask so as to provide the claimed composition, which comprises 98 to 100% by weight biodermal constituents. In fact, Dede is directed to a composition that mostly comprises non-biodermal constituents. Thus, Dede clearly provides no motivation to reduce the amount of non-biodermal constituents in the composition described by Lask. In addition, given the significant differences between the compositions described in Lask and Dede, one of ordinary skill in the art would not look to Dede to determine ways to modify the composition of Lask.

Neither Lask nor Dede, alone or in combination, teach or suggest the present invention. Therefore, the rejection under 35 U.S.C. §103 in view of these references should be reconsidered and withdrawn.

In view of the above amendments and remarks, it is respectfully submitted that the present application is in condition for allowance. Favorable consideration and prompt allowance are therefore respectfully requested.

Should the Examiner believe anything further would be desirable in order to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,



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WPB:MLM/jam

Attachment:
Appendix

Date: June 30, 2003

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<p>DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461</p>

APPENDIX

Changes to Claims:

Claims 23-29 are added.

The following is a marked-up version of the amended claims:

5. (Amended) The composition according to claim 1, wherein a major portion of said composition ~~is~~ consists of one or more constitutive components of skin ~~and a minor portion of said composition is a skin nutrient.~~

15. (Amended) The composition according to claim 1, wherein said composition does not comprise any excipient or vehicle ~~including water.~~

16. (Amended) The composition according to claim 1, wherein each constituent is selected from the group consisting of:

(a) substantially cytocompatible and/or bioassimilable components present in constitutional form in the skin;

(b) macromolecular components ~~identical or similar, respectively, to~~ constituents of the skin;

(c) components assimilable by the skin; and

(d) inert components with respect to skin.

20. (Amended) The method according to claim 18, wherein a major portion of said composition ~~is~~ consists of one or more constitutive components of skin ~~and a minor portion of said composition is a skin nutrient.~~